

# Court of Appeals, State of Michigan

## ORDER

Tarek Aboudaya v Auto Club Insurance Association

Docket No. 294261

LC No. 08-018095-NF

Brian K. Zahra  
Presiding Judge

Kurtis T. Wilder

Kirsten Frank Kelly  
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the August 11, 2009, order of the Wayne Circuit Court granting summary disposition to defendant/cross-defendant Amerisure hereby is REVERSED. The record reflects that plaintiff received direction from T&S regarding the majority of the patients to be transported; even when plaintiff independently recruited a patient, T&S processed the billing. Although T&S provided plaintiff with a 1099 form, that is not dispositive, where all factors require consideration. T&S had the right to hire and fire plaintiff and T&S paid plaintiff. It does not appear that plaintiff had the option to turn down T&S' requests for patient transport. Plaintiff clearly was working toward the accomplishment of a common goal with T&S regarding the transport of patients, where the work that plaintiff performed, as the sole driver for the only van owned by T&S, comprised T&S' business of transporting patients. Further, T&S owned the van that plaintiff drove. Plaintiff did not perform work for any other company. Plaintiff also did not hold himself out to the public for hire. Pursuant to those undisputed facts, plaintiff was an employee under the economic reality test, *Amerisure Ins Co v Time Auto Transportation, Inc*, 196 Mich App 569, 575; 493 NW2d 482 (1992). That conclusion comports with the objective of the underlying statute "to place the burden of providing no-fault benefits on the insurers of [employer-furnished] motor vehicles, rather than on the insurers of the injured individual." *State Farm Mut Auto Ins Co v Sentry Ins*, 91 Mich App 109, 114; 283 NW2d 661 (1979). In light of this resolution, the Court does not address appellant's alternate issue regarding statutory ownership.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 30 2009

Date

*Sandra Schultz Mengel*  
Chief Clerk